Summary judgment in contract actions may be rendered on plaintiff's affidavit of claim, unless defendant shall file an affidavit of merits. This statute authorizes a practice which has proved highly effective where used, and will help to convince the layman that the law really takes an interest in speedy justice.

Another important reform relates to withdrawing the case from the jury. Under the present practice, after a motion to direct a verdict has been made and overruled and the jury has rendered a verdict for the other party, it is impossible thereafter for either the trial court or the supreme court to set aside the verdict and enter the judgment for the party who made the motion, even though they are convinced that as a matter of law a verdict should have been directed as asked. The only remedy is a new trial. But such a remedy is wholly inadequate. If the verdict should have been directed in a party's favor why not correct the error by doing what should have been done? If a party is entitled to a judgment why offer him only a new trial, which is clearly no equivalent for what the court unjustly deprived him of! The court should have power in such a case to render a judgment notwithstanding the verdict, in favor of the party lawfully entitled to it, and the supreme court should have power to order such a judgment to be entered. Such power is granted in the bill now proposed, in Chapter XXI, Section 15, and Chapter I, Section 32, and the constitutionality and expediency of the rule are well argued by the Commission in the report to the Governor with which they preface the bill.

Other features of this bill might be mentioned, but enough has been said to indicate the scope and character of the revision which the Commission has prepared. The task was a laborious one, and it has been done with great thoroughness and unusual skill. No hobbies or pet ideas seem to have found their way into the bill, but from beginning to end it is a sound, sensible and progressive document, neither too conservative to meet the just demands of the public, nor so radical as to unsettle the procedure of the State. E. R. S.

RIGHT TO STOCK DIVIDENDS AS BETWEEN LIFE TENANT AND REMAINDERMAN.—In the case of *Wildering* v. *Miller*, (Ohio, 1914) 106 N. E. 665, the Supreme Court of Ohio, for the first time, was called upon to say who was entitled to a stock dividend declared during the life tenancy, as between an equitable life tenant and the remainderman, under a will vesting in trustees the title to stock, "to pay the entire net income" to a life tenant and at her death to distribute the trust property. The stock, treated as stock dividends by the court, was issued upon a reorganization of the corporation; for each share in the old the stockholders received two shares in the reorganized company. The court (Wanamaker, J. *dissenting*) held the extra shares thus issued belonged to the corpus of the trust, and vested in the remainderman.

This question has presented a confusing mass of decisions, which however, lend themselves to arrangement under three general rules, known as the Massachusetts and Modern English, the New York and Kentucky, and the

Pennsylvania. Probably the first decision on this question, and the one that originated what is now designated as the ancient English rule, was *Brander* v. *Brander,* 4 Ves. Jr. 800, decided in 1779. This laid down the rule that all extraordinary dividends belonged to the corpus, and the ordinary dividends to the life tenant. This rule was approved by the House of Lords in the case of *Irwin* v. *Huston,* 4 Paton, 521, and was followed in *Paris* v. *Paris,* 10 Ves. Jr. 185; *Clayton* v. *Gredam,* 10 Ves. Jr. 288; *Witts* v. *Seere,* 13 Ves. Jr. 363; and *Cummings* v. *Boswell, 2* Jur. N. S. 1005. The first breaking away from the rule was in 1847 in *Price* v. *Anderson,* 15 Sim. 473, and this departure was concurred in by the House of Lords in 1850, *Johnson* v. *Johnson,* 15 Jur. 714. It was not, however, until 1887 that the modern rule was established in *Bouch* v. *Sproule,* L. R. 12 App. Cas. 397. This is also the Massachusetts rule which perhaps has its best statement in *Minot* v. *Paine,* 99 Mass. 108, as follows, "A simple rule is to regard cash dividends, however large, as income, and stock dividends, however made, as capital." This doctrine has been adhered to by both the English and Massachusetts courts since its adoption, *Jones* v. *Evans,* 107 L.T.N.S. 606, [1913] 1 Ch. 23, 82 L.J. Ch. N. S. 12, 19 Manson 397; *Hyde* v. *Holmes,* 198 Mass. 287,84 N. E. 318; *D'Ooge* v. *Leeds,* 176 Mass. 558, 57 N.E. 1025; and has been followed in the following decisions of other states: *Jackson* v. *Maddox,* 136 Ga. 31, 70 S. E. 865; *Mann* v. *Anderson,* 106 Ga. 818, 32 S. E. 870; *Miller* v. *Guerrard,* 67 Ga. 284; *Bishop* v. *Bishop,* 81 Conn. 509, 71 Atl. 583; *Smith* v. *Dana,* 77 Conn. 543, 60 Atl. 117; *Green* v. *Russell,* 79 Conn. 547, 65 Atl. 1056; *Boardman* v. *Mansfield,* 79 Conn. 634, 66 Atl. 169; *Billings* v. *Warren,* 216 Ill. 281, 74 N. E. 570; *Blim* v. *Gillett,* 208 Ill. 473, 70 N. E. 704; *DeKoven* v. *Asop,* 205 Ill. 309, 68 N. E. 930; *Newport Trust Co.* v. *Rensselaer,* 32 R. I. 231, 78 Atl. 1009; *In re Brown,* 14 R.I. 473, 70 Atl. 371; *Wallace* v. *Wallace,* 90 S.C. 61, 72 S.E. 553; *Gibbons* v. *Mahon,* 136 U. S. 549, 34 L. Ed. 525.

There sprang up in New York a different rule, now known as the New York and Kentucky rule. It holds if the dividends are declared during the existence of the life tenancy they go to the life estate, regardless of the nature of the dividends, whether cash or stock, and paying no heed to the time when the dividend accumulates. This rule was in force in New York from the decision of *In re Kernochan,* 104 N. Y. 618, 11 N. E. 149, until 1913, when the Pennsylvania rule was recognized and declared as the law of that state, *In re Osborne,* 209 N. Y. 450, 103 N. E. 723. In Kentucky this rule was established by *Hite* v. *Hite,* 93 Ky. 257, 20 S. W. 778, and has recently been approved in *Cox* v. *Gaulbert,* 148 Ky. 407, 147 S. W. 25. This rule has been followed in the following decisions: *Bryan* v. *Aikin,* (Del. 1913) 86 Atl. 674; *Atlantic Coast Line Cases,* 102 Md. 73, 61 Atl. 295; *Safety Deposit and Trust Co.* v. *Long,* 102 Md. 81, 61 Atl. 297; *Walker* v. *Walker,* 68 N. H. 407, 39 Atl. 432; *Pritchitt* v. *Nashville Trust Co.,* 96 Tenn. 472, 36 S. W. 1064; *Soehinlein* v. *Soehinlein,* 146 Wis. 330, 131 N. W. 739.

The Pennsylvania courts established yet a different rule, which is that regardless of the nature of the dividend, it shall be apportioned according to the time of accumulation. That which accumulates during the life of the life tenant to go to him, and all other to fall into the corpus of the trust

fund. This rule was established in *Earp's Appeal,* 28 Pa. 368, and has been followed by that court without deviation down to date. Some of the later cases are: *Stokes' Estate,* 240 Pa. 288, 87 Atl. 975; *Boyer's Appeal,* 224 Pa. 144, 73 Atl. 320; *Smith's Estate,* 140 Pa. 344, 21 Atl. 438; *Oliver's Estate,* 136 Pa. 43, 20 Atl. 527. This rule has been adopted in the following cases; *Kalbach* v. *Clark,* 133 Ia. 215, 110 N. W. 599; *Gilkey* v. *Payne,* 80 Me. 319, 14 Atl. 205; *Foard* v. *Safe Deposit and Trust Company,* 122 Md. 476, 89 Atl. 724, 12 MICH. L. REV., 620; *Ex parte Humbird,* 114 Md. 627, 80 Atl. 209; *Goodwin* v. *McGaughey,* 108 Minn. 248, 122 N.W. 6; *Holbrook* v. *Holbrook,* 74 N.H. 201, 66 Atl. 124; *Ashurst* v. *Potter,* 29 N. J. Eq. 625; *Ballantine* v. *Young,* 79 N. J. Eq. 70, 81 Atl. 119; *Day* v. *Faulks,* 79 N. J. Eq. 66, 81 Atl. 354; *In re Osborne,* supra.

It would appear from the above enumeration of cases, following the different rules, that the courts of New Hampshire and Maryland had changed from the Kentucky to the Pennsylvania rule. But this is not necessarily true, for it may be that in the cases approving the Kentucky rule all the dividends had accrued during the life tenancy, and in such case the courts would not be compelled to pass on the question of apportionment, and in fact should not do so.

Probably the most interesting decision is that of the Court of Appeals of New York *In re Osborne,* overruling a long line of authorities and changing to the Pennsylvania rule. This was accomplished by a divided court, and it is noteworthy that Mr. Justice GRAY, who dissents, had written the opinion in *Lowery* v. *Farmer's Loan and Trust Co.,* 172 N. Y. 137, 64 N. E. 796, approving the old New York and Kentucky rule. He was also the only judge who sat in the *Osborne* case and was on the bench at the time of the decision of *In re Kernochan,* supra, the case establishing the rule in New York. The effect of this decision will, at least, be to change the name of the rule formerly in force in New York, to the Kentucky rule, rather than its former appellation, New York and Kentucky rule.

Each of the rules has its merits, those of Massachusetts and Kentucky being easy of application; that of Pennsylvania difficult of application but undoubtedly more equitable and more efficacious in carrying out the intent of the testator or donor.

Regardless of which rule controls in a particular jurisdiction, it is admitted by all that if the deed or will, creating the trust, discloses an intention of the donor or testator that the dividend should be applied in a particular manner, that intent governs, *Bishop* v. *Bishop* (supra); *Spooner* v. *Phillips,* 62 Conn. 62, 24 Atl. 524; *Bryan* v. *Aikin* (supra); *Foard* v. *Safe Deposit Co.* (supra); *Thomas* v. *Gregg,* 78 Md. 549, 28 Atl. 565; *In re Robinson's Trust,* 218 Pa. 481; *In re Todd,* 147 N. Y. Supp. 161; *In re Wells,* 156 Wis. 294, 144 N. W. 174; *Gibbons* v. *Mahon* (supra); *Furley* v. *Hyder,* 24 L. J. Ch. N. S. 626.

Although the court in the principal case discusses the above rules, and seemingly is inclined toward that of Massachusetts; the decision rests on the presumed intent of the testator, as gathered from the will. Hence it cannot, as yet, be said that the Ohio court has committed itself to any one of them. R. B. O'H.